

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 811 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMKISHAN RAMDULARI YASI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for the appellant.

Mr. B.D. Desai, APP for the respondent State.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 23/06/1999

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

The appellant is one of the four original-accused persons who is held to be guilty for the offence punishable under Section 302 of Indian Penal Code for committing a murder of one William Chotabhai Christian on 12.11.1988, at about 9.30 p.m., in the house of deceased, by the learned Additional City Sessions Judge, at

Ahmedabad, in Sessions Case No. 154 of 1989 by his decision dated 7th November 1989, has filed this acquittal appeal through jail, who is provided legal aid.

2. In short, the prosecution case has been that around 9.45 p.m. on 12-11-1988, the appellant, who is original-accused No.1, (who is hereinafter referred to as such) along with three other accused persons, went to the house of the deceased situate in Shastrinagar, Bapunagar, in Ahmedabad, after evolving a criminal conspiracy to commit the murder of deceased and inflicted one knife blow with the intention of causing his death. It was also the prosecution case, that in the alternative accused persons committed murder in furtherance of the common intention to commit the murder of the deceased William. There was also a charge under Section 135(1) of the Bombay Police Act.

3. In support of the prosecution version, reliance was placed on 14 prosecution witnesses and also the medical reports and Forensic Science Laboratory reports, FIR and other such documents, to which reference may be made by us, hereinafter, at an appropriate stage. Upon a perusal of the evidence, the learned trial Court Judge found the appellant original-accused No.1 guilty for having committed an offence under Section 302 in causing murder of deceased William giving benefit of doubt to original accused No. 2, 3 & 4 against whom, admittedly, no acquittal appeal is filed. The trial Court also found that original-accused No.1 found guilty of the offence under Section 135 of the Bombay Police Act, for which no separate sentence is recorded.

4. After having extensively examined the viva voce evidence led by the prosecution, and hearing the learned Advocate attended in defence of the accused, appellant, Mrs. Banna Dutta, and the learned Additional Public Prosecutor, Mr. B.D. Desai, we have carefully noticed, that the impugned conviction judgment and resultant sentence order, recorded by the trial Court against the original-accused No.1, are quite justified as they have remained unquestionable.

5. The complicity of the accused No.1, in having committed the murder of deceased William in his house, who was alone at that time, is evidently, and without any doubt, has been testified by the next door neighbour, prosecution witness No.5 Babu Magha, examined at Ex.31 who is supported by the evidence of prosecution witness No.5 Shantilal Popat, examined at Ex. 33, who was present in the house of prosecution witness Babu, when

they heard the shouts raised by the deceased William, after having received a fatal blow of knife on the vital part of the body in the left portion of the chest. Both of them had gone and found that accused No.1 Ramkishan jumping from balcony, and on being questioned they were told by accused that he was in his conscious state and that it was he who fled from the balcony, gave one knife blow. One knife blow inflicted by the accused No.1 proved fatal, in view of the medical evidence adduced by the prosecution. Nothing has been successfully shown why the version of prosecution witness No.5 Babu Magha, a complainant and a neighbour, who has no axe to grind against accused should not be relied upon. In our opinion, the trial Court has correctly placed reliance on evidence of prosecution witness No.5 Babu and his friend, prosecution witness No.6 Shantilal Popat. It is also found from their evidence that the accused was in habit of coming and meeting the deceased before the said incident occurred.

6. It was prosecution witness No.5, Babu, who lodged a complaint which came to be registered as C.R. No. 221 of 1989 and upon the investigation, it was noticed that there was a conspiracy or a common object to commit murder of deceased William.

7. The prosecution case, qua accused No.1, appellant before us, is rightly accepted by the trial Court. We would also like to highlight the following important aspects, which have remained uncontroverted from the assessment of the evidence, which, in unequivocal terms, reinforce the case of the prosecution qua accused No.1, and the impugned judgment and conviction recorded by the trial Court against the appellant;

(i) The FIR was lodged by prosecution witness Babu at the earliest point of time. In fact, the trial Court has rightly said that there was no delay and even if delay was presumed or attributed, then also there is sufficient explanation on record as to why it came to be lodged 3 - 4 hours after the incident occurred.

(ii) The evidence of prosecution witness No.5 Babu, the complainant, whose presence was quite natural at the venue of offence being the neighbour, and also the presence of P.W. No.6 Shantilal Popatlal in the house of P.W. No.5 Babu was also quite natural as he happened to be a friend whose evidence is fully supported by the prosecution witness No.4 Chandrika Cyril, examined at Ex.

30. She was a student of deceased William, who has clearly testified that accused No.1 Ramkishan and other accused persons were visiting frequently in last six months the house of the deceased William. Not only that, it is she who has stated in her evidence without any hesitation that accused No.1 along with three other persons had been seen by her going to the house of deceased around 9.00 p.m. on the same unfateful night. This circumstance borne out from the evidence of Chandrika lends material reinforcement to the evidence of the prosecution witness No.5 Babu, and prosecution witness No.6 Shantilal.

(iii) The statement recorded under Section 313 of the accused No.1 Ramkishan, before the trial Court in explaining as to how he happened to be near the venue of offence immediately after this occurrence, is a radiating and supporting imprint in favour of prosecution. It is, therefore, clearly admitted by the accused that he was caught hold by the people collected by near the venue of offence immediately after its occurrence as he was passing by that side. It is a matter of common understanding, that people, who have collected near the venue of offence, had no reason to catch hold of an innocent person or a stranger passing thereby. It is, therefore, rightly observed by the trial Court that this aspect materially corroborates the version of the prosecution and the evidence of complainant.

8. It will be also interesting to highlight from the said statement of accused No.1 Ramkishan, that on being questioned by the public gathered there who had caught hold of him he, narrated his name and he further added that it was not he but accused No.2 Bholesh who had given the knife blow on the person of the deceased. What does it show ? It is nothing but a open statement showing guilty mind and consciousness. Otherwise he has no reason as to who gave knife blow and by and how.

9. The clothes of accused No.1 were found with human blood "B" group which was also the blood group of the deceased. The explanation, which is sought to be offered, is nothing but an afterthought as he has stated in his further statement that it was his blood. The muddamal articles-bush shirt and pant of accused, thus, were tainted with human blood group "B", which was also the blood group of the deceased as the bloodstains found

in the left leg slipper and other clothes including the knife found were of the same blood group as revealed during the course of the investigation.

10. Again, a very important and supporting piece of evidence is given by the Investigating Officer. After having come to know about the incident, the police reached the venue and, there, the accused No.1 was found having been caught hold of by the neighbours and therefore accused No.1 was taken by the police straight to the police station.

11. Accused No.1 had also sustained minor injuries. He attempted to explain in his further statement that the same were caused on account of beating by the public which is, undoubtedly, noticed to be not only lame, but untrue. This is one of the circumstances which supports the case of the prosecution.

12. The very important piece of evidence is in form of oral dying declaration made by the deceased William immediately after accused jumped out of the gallery of his house, when prosecution witness No.5 Babu Magha and prosecution witness No.6 Shanti reached there. It is established by the prosecution that in presence of both these witnesses, deceased William, unequivocally, made a statement that accused No.1 gave knife blow. In fact, according to the settled proposition of law, the conviction can be founded upon the sole dying declaration if it mentions the true and correct version of the deceased and unprompted and untainted.

13. It becomes very clear, that the deceased William died a homicidal death and he had sustained a fatal knife blow, the author of which was none else than the accused appellant before us. The evidence of the prosecution, proving the complicity of the accused for the offence punishable under Section 302 in committing the murder of deceased William, is not only satisfactory, but quite important and without any doubt. Therefore, the conviction and resultant punishment, under Section 302 of the Indian Penal Code, against the appellant original-accused No.1, recorded in the impugned judgment by the trial Court, in our opinion, is fully justified. The culpability of the accused, for having committed murder of deceased William, is proved beyond doubt. The conviction under Section 135(1) of the Bombay Police Act, is also supported by the evidence. We, therefore, find that there is no substance in this Appeal at the instance of original-accused No.1. It is, therefore, required to be dismissed. Accordingly it is dismissed.

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